DECEMBER 15, 1956

THE

SOLICITORS' JOURNAL

VOLUME 100

NUMBER 50

CURRENT TOPICS

Retirement Benefits

THE rapid progress made by the Council of The Law Society towards the bringing into being of a retirement benefits scheme for solicitors is recorded in a message from the President in the December issue of the *Law Society's Gazette*. It is hoped to have the necessary documents completed and approved by the Inland Revenue and the scheme in working order by 1st January, 1957. The group of leading insurance companies who are backing the scheme have agreed to antedate it to 1st November, 1956, for the purpose of calculating the ages of entrants before 31st January, 1957, with birthdays in November, December or January. In order to assist solicitors in choosing the form of protection best suited to their circumstances the Council are establishing an advisory service, details of which are to be published later. The scheme, which is financially more favourable than those being offered by insurance companies to solicitors individually, had not been completed in final detail at the time of the *Gazette's* going to press, but a full statement was promised within a few days. One of the advantages of the scheme, a brief outline of which appears in the *Gazette*, is that solicitors will be free to make whatever contribution in any year they wish within the limits permitted by the Finance Act, 1956, or to make no contribution at all.

Not the Law's Delay

THE sandwichman who used to parade hopefully outside the Law Courts exhibiting his written opinion, expressed with such admirable terseness, has had the generality of his counsel impaired by some comments made in the House of Lords last week. "Arbitrate, Don't Litigate" was his message to contentious humanity: LORD TUCKER and VISCOUNT SIMONDS, speaking of the kind of case that was before them in *Fairclough, Dodd & Jones, Ltd.* v. *J. H. Vantol, Ltd.* (*The Times*, 6th December), may be said to have offered the very opposite advice. The full speeches are not yet publicly printed, but it is clear that they provided the ultimate determination of a question of law which first arose between the parties in the early part of 1951 and which could, according to MCNAIR, J. (see 99 SOL. J. 685), in an observation with which Lord Tucker has associated himself, have been disposed of in two or three months if the parties had been minded to make use immediately of the machinery of the Commercial Court. Instead, they went to an umpire and then to the appeals committee of a trade association. Ultimately, a special case having been stated on the point of

CONTENTS

law involved, the matter reached the High Court in May, 1955. We do not read the reported observations of their lordships as decrying the process of arbitration in general. It is a matter of the fitness of the procedure for the particular purpose in view. But where, as Viscount Simonds said, the substantial issue raises a question of construction of a commercial instrument in common use which must to the knowledge of the parties come in the end before a court of law, it is difficult to see the advantage of pursuing the tortuous and expensive course of arbitration and then the statement of a special case.

Access Provisions

WHERE a parent is granted custody of children under the Summary Jurisdiction (Separation and Maintenance) Acts or the Guardianship of Infants Acts the order frequently contains provision that the other parent shall be allowed access to the child. In Oke's Magisterial Formulist, 14th ed., the precedent reads that that parent shall "have access" to the child. In the latest supplement to Oke, however, this has been amended to read that the parent having custody "shall grant" to the other parent reasonable access to the child. The editor, Mr. J. P. WILSON, explains that the reason for the change is that compliance with an order of a magistrates' court has to be enforced under s. 54 of the Magistrates' Courts Act, 1952, and it could be argued that all the original provision meant was that the one parent could have access but that there was no compulsion on the other parent, having custody, to grant it. The new wording will make it clear that an obligation rests on the parent having custody to grant access and that the latter will be liable to the penalties prescribed by s. 54 if access is not granted. A case on these lines is reported in the *Journal of Criminal Law*, April, 1956, p. 131.

Legal Aid Practice

IT is now thought essential, the Council of The Law Society state in the current issue of the *Law Society's Gazette*, that a copy of the relevant civil aid certificate, together with copies of all relevant authorities under reg. 14, should be included with papers delivered to counsel. The Council wish to remind panel solicitors that in the event of any items being disallowed on taxation under Sched. III to the Legal Aid and Advice Act, 1949, by reason of the work done being outside the scope of the certificate, the costs will not be reimbursed from the Legal Aid Fund. A further note on legal aid reports that leading counsel, instructed by the Council of The Law Society, has advised that a solicitor acting for an assisted person is under a clear statutory duty to pay over moneys recovered in an action to The Law Society, and that, if he commits a breach of this duty, he would, in counsel's view, be ordered by the court to make good the resulting loss suffered by the Legal Aid Fund.

Road Traffic Act, 1956: Further Commencement Order

As we go to press, we learn that by the Road Traffic Act, 1956 (Commencement No. 2) Order, 1956, the following provisions of the Act are to come into force on 1st January next: ss. 5, 6, 15, 19–24, 41, 47 (2), and Scheds. II, III, VIII (19) and IX (so far as it affects s. 1 (4) of the Road Transport Lighting Act, 1927). The sections deal with, *inter alia*, control of dogs on roads, parking places, and lighting-up time.

Reduction in Factory Accidents

IT is a real comfort to those who have to conduct litigation arising out of factory accidents, and know something of the shocking injuries that sometimes have to be assessed in terms of money damages, to learn that the accident rate in factories has decreased in every year since the war except 1953, when there was a slight increase. This is stated in the annual report of the Chief Inspector of Factories, issued on 4th December (H.M. Stationery Office, Cmnd. 8, 9s.). During 1955, he reports, the accident rate for men was about 26 per 1,000, for women about 10 per 1,000, and for boys and girls about the same as for men and women respectively. The Chief Inspector, Sir GEORGE BARNETT, in a statement made on the same day as the report, said that although many larger building concerns had produced a marked improvement in safety, attention given to safety by many of the smaller firms, particularly by those engaged in maintenance and jobbing work, was negligible.

Judge and Jury

THE third of the four Hamlyn lectures by Mr. Justice DEVLIN on Trial by Jury, on 28th November, stressed the composite nature of judge and jury. The prescription for this compound had been one of the greatest achievements of the common law. Hard cases made bad law: the jury was sometimes too frightened of the hard case and the judge of the bad law. This was the eternal conflict between law in the abstract and the justice of the case; out of this dialectic the just verdict came. Mr. Justice Devlin said that if there was a conflict the lay mind predominated. As to expressions of opinion by the judge, he said that, unless in favour of an accused, it would be exceptional for a judge to put forward an opinion on the case as a whole, but he was permitted to express his opinion freely and strongly, provided he was fair and made it clear that the jury was free to give it what weight it chose. "He practically stands convicted by the evidence of the prosecution," one judge observed to the jury. "You must do your duty." That was passed by the Court of Criminal Appeal, though it was "very strong" (*R.* v. *Hepworth* (1910), 4 Cr. App. R. 128).

Solicitors' Announcements in the Press

IN the current issue of the *Law Society's Gazette*, the Council draw attention to a passage at p. 20 of the Secretary's Lecture on Professional Conduct and Etiquette, in which he said that a solicitor may put his name, address and description "solicitor" in all legal notices, for example, on behalf of executors or administrators. "There is no objection," he continued, "to a solicitor's name appearing as an attesting witness to a public notice, or, indeed, to a notice by a husband disclaiming his wife's debts (for what it is worth), or as a witness to an application for a licence or an application for naturalisation, or anything like that." The Council emphasise that it is the responsibility of the solicitor causing the notice to be inserted to ensure that its appearance as to layout and type is not such as to constitute it an advertisement rather than a notice. The solicitor, the *Gazette* adds, should ensure that it is understood by the newspaper or other periodical in which the notice is to appear that it must appear only in the form and type appropriate to formal notices.

MOTOR VEHICLE OBSTRUCTION AND THE CRIMINAL LAW

A LEARNED correspondent, in referring to the article "Street Parking" at p. 780, *ante*, has raised the question of the rights of an occupier of premises to park vehicles in the highway outside them without being prosecuted. This article will deal with the criminal law only, and the civil cases to be mentioned will be used merely to illustrate certain principles which appear to be relevant in criminal proceedings for obstruction of the highway. Further, this article will be concerned with the general law and not with local orders which may prohibit waiting in a particular part of the street or for more than a certain period. The Road Traffic Act, 1956, ss. 19 to 24, deal with parking and charges for use of the highway for that purpose, but as the relevant sections are not yet in force nor have any regulations been made it is inappropriate to comment on them at this stage.

The general law

Proceedings by the police for obstruction can be brought under the Highway Act, 1835, s. 72 (wilfully obstructing the free passage of a highway) or under the Motor Vehicles (Construction and Use) Regulations, 1955, reg. 89 (causing or permitting a motor vehicle or trailer to stand on a road so as to cause any unnecessary obstruction thereof.) Proceedings can also be brought under the Town Police Clauses Act, 1847, s. 28 (wilfully causing an obstruction in a public thoroughfare), where that section is in force, but questions may arise whether the police may prosecute under it without the consent of the local authority (see 119 J.P. News. 746). There are also special statutes applicable in London. The general law under all these is, it is submitted, the same and the observations which follow will generally be applicable under whatever provision proceedings are brought.

A leading case is *Gill* v. *Carson and Nield* [1917] 2 K.B. 674, where the earlier authorities were considered. A carter had left his horse and cart unattended in a main road with two sets of tramlines down the centre, so that any vehicle going in the same direction would have to draw out on the tramlines to pass. The carter was 70 yards away having a meal and his vehicle was left for five minutes. There was no evidence that any person or vehicle had been obstructed. Magistrates convicted him under the Town Police Clauses Act, 1847, s. 28, but the High Court quashed the conviction on the ground that there had been no wilful obstruction and no unreasonable use of the right of stopping. Lord Reading, C.J., added, however, that if a lengthy period of time had elapsed the carter might have been guilty, for this would have been an unreasonable use of the highway. He continued: "I do not think it is necessary to prove that any person has been actually obstructed. It is sufficient to prove facts [showing] that in the ordinary course persons may be obstructed and that the actual use of the road was calculated to obstruct, even though no person is proved to have been obstructed." Shearman, J., said: "Provided that the facts are such that the clear inference drawn by the justices is that there was an obstruction, it is not necessary to call any person who was obstructed. But the obstruction must be wilful. What the appellants did in this case was no more than a legitimate use of the road, and if anyone had been obstructed the obstruction would not have been wilful."

It is submitted that this case establishes the proposition that in proceedings under the Highway or Town Police Clauses Acts it must be proved that an obstruction was wilful, and wilfulness may be shown firstly by deliberate conduct, e.g., slewing a lorry broadside across Chancery Lane to prevent traffic passing. Then a very brief period of obstruction would suffice for a conviction. Secondly, wilfulness may be shown without evidence of deliberate blocking if the defendant has made an unreasonable use of the highway by leaving his vehicle for an "unreasonable" time. Reasonableness will be a matter for the court, having regard to the time for which and at which it was left, its position, the nature of the street and the room taken up. Obvious examples will occur to the reader if he considers leaving a car or, on the other hand, a solo motor cycle, at 2 a.m. or at 2 p.m. in Chancery Lane or, on the other hand again, in a wide, residential road in the suburbs.

A recent case is *Solomon* v. *Durbridge* (1956), 120 J.P. 231. A motorist parked his car in a line of cars and left it there for five hours. He was summoned for causing an unnecessary obstruction, and he argued that as he parked in a line of cars he was not causing one. The High Court held that he clearly caused an obstruction. This case was under the Motor Vehicles (Construction and Use) Regulations and it is submitted that it shows that "unnecessary" bears much the same meaning as "wilful."

Parking outside own premises

In *Wilkins* v. *Day* (1883), 12 Q.B.D. 110, a civil case, the defendant had left a roller on the highway; he owned the land on each side. It was found that he had not left the roller there for any necessary purpose but for his own convenience. The court held that it was an obstruction in the sense that it impeded the proper use of the highway, and he had to pay damages arising from a death caused when a horse shied at the roller.

Original Hartlepool Collieries Co. v. *Gibb* (1877), L.R. 5 Ch. 713, another civil case, was on obstructing access to a wharf from the river, but in it Jessel, M.R., made a number of observations relating to obstructing highways and access to houses, instancing the two doors to divided houses in Portland Place. In particular, he said: "It is not unreasonable that your neighbour should give an evening party occasionally and that there should be a file of carriages running across your door. But it would be very unreasonable if they did not break the file in order to allow your carriage to come to your own door, and still more unreasonable if they gave parties every day, whereby the carriageway to your house was continually obstructed." These remarks are included to show not so much what "your" rights are as to show what the neighbour, whose house also abuts on the street, may not do.

In *Vanderpant* v. *Mayfair Hotel Co., Ltd.* [1930] 1 Ch. 138, a civil case, it was held that the right of an occupier of premises abutting on a highway to make use of the highway for the purpose of obtaining access to his premises and of loading and unloading goods is subject to the right of the public to use the highway; where such user by the occupier, though reasonable so far as his own business was concerned, causes a serious obstruction to the public the court will interfere at the suit of the Attorney-General.

In *Trevett* v. *Lee* [1955] 1 W.L.R. 113 the defendant, whose house abutted on the highway, laid a small hosepipe across the road in order to supply water to his house. The plaintiff, a user of the highway, fell over the pipe and sued for damages.

Evershed, M.R., said that there were two kinds of rights in the highway—that of the public to use it for passage and that of the owner of a house abutting on it to use it for access to the house. The question whether a householder was or was not obstructing a highway so as to give rise to a cause of action was to be judged by balancing, on standards of reasonableness, the claims and conduct of the householder on the one side and those of members of the public on the other.

There is obviously a big difference between a small hosepipe and a parked car taking up, perhaps, one quarter of the carriageway, and it is submitted that the occupier of a house, shop or office who parks a car or van outside it will generally be in a not much better position, if prosecuted, than a stranger who has parked a vehicle there. The occupier will, however, be able to throw into the scale on his side the fact that he is the occupier; the magistrates can take this additional matter into account in deciding whether or not he is making an unreasonable use of the highway and to this extent, it is submitted, his position is better than that of a stranger. But it will all be a question of degree, and the view is advanced that in Chancery Lane on a week-day afternoon an occupier of a building in the Lane who left his car outside for twenty minutes could properly be convicted, because it might well cause single-line traffic and congestion. To do the same late on a Sunday night would be not nearly so serious a matter.

A Scottish decision

The High Court of Justiciary have decided a like point against the occupier, although the case *Marr* v. *Turpie* is reported only in the *Journal of Criminal Law*, October, 1949. The facts of this *Turpie causa* were that the defendant was a solicitor with an office in a busy street in a large town; the street was about thirty feet wide and cars, as is well known, are seldom more than 6 feet in width and generally much less. He left his car outside his office, intending to return immediately, but a client waiting in the office made a successful interception and detained him for twenty-five minutes. (Does the reader know that type of client?) He was convicted under the Burgh Police (Scotland) Act, 1892, s. 381 (10), for causing a carriage to stand longer than necessary for loading or unloading goods or passengers. He appealed, claiming that the offence was merely a technical offence and the prosecution unwarranted; it seems that in Scotland the conviction could be quashed on such grounds. The High Court upheld the conviction, Lord Jamieson saying that leaving a car outside premises in a busy street could not be regarded as a technical offence and that if all the occupants of the street were to do the same traffic in it would be very difficult, if not impossible. The Lord Justice-Clerk said that it would be "technical" if a car was left for a minute or two while the driver went into a shop.

Although the statute in that case was in a different form, it is submitted that like principles would apply in England and that generally the owner or occupier of premises in a busy street—and *a fortiori* a visitor to them—would be liable to conviction if he left a vehicle outside them in circumstances which showed an unreasonable use of the highway calculated to obstruct (*Gill* v. *Carson and Nield*, *supra*).

Wilful damage

In the article on "Street Parking" at p. 780, *ante*, "A B C" discussed the question of moving a vehicle parked outside one's own house and the possibility of proceedings if one broke its window to reach the brakes, when it was impossible to reach them otherwise. If the vehicle owner sued in the county court for the damage, the householder might have a counter-claim (cf. *Harrison* v. *Duke of Rutland* [1893] 1 Q.B. 142), but if the householder was prosecuted for wilful damage there would be no question of a counter-claim. The householder would no doubt be careful to see that he did no more damage to the car than was absolutely necessary, for if he did damage it to excess no defence of claim of right would avail him (*R.* v. *Clemens* [1898] 1 Q.B. 556). Also, if the damage exceeded £5, the magistrates would presumably commit the case for trial if a claim of right were raised by the defendant, as in such a case it would be. Whatever the damage, a bona fide claim of right, if reasonable, will generally be a defence to a charge of wilful or malicious damage.

Is the position of the householder worsened when the portion of the street outside his house has been designated as a parking place under some statutory authority, e.g., the Public Health Act, 1925, s. 68? That section lays down a procedure for notifying the public before an order designating a street as a parking place is made and allows a right of appeal against such an order. From this it can be argued that, once the order has been made and the time for appealing has expired, the householder must suffer the parking of vehicles outside his premises as being authorised by virtue of a statute. However, the proviso to s. 68 (1) (*c*) does say that no order shall authorise the use of any part of a street so as unreasonably to prevent access to any premises adjoining the street, or the use of the street by any person entitled to the use thereof, or so as to be a nuisance. Possibly a householder could argue that an order was *ultra vires* so far as it purported to authorise any of those forbidden things. However, whether there was an order in force or not, the defence of a householder summoned for damaging a parked car in removing it from the part of the street outside his house could still properly be based on a fair and reasonable claim of right—at any rate, on his first summons.

Deflating tyres

A correspondent at p. 833, *ante*, mentions a householder who requested an offending car-owner to remove his car and, when the owner "flatly refused," deflated the tyres. It is interesting to speculate, in the absence of authority, whether such action can be wilful damage. The latter subject is discussed at p. 407, *ante*, where decisions are cited in which watering milk, defacing posters and dismantling a frame were held to be wilful damage. In *King* v. *Lees* (1949), 47 L.G.R. 42, the defendant had made water in a taxicab; the mat was saturated and the cab had to be taken off the streets till the mat became clean and dry. The magistrate dismissed a charge of injuring or defacing a hackney carriage, saying that the matter could be put right quickly and easily, leaving no after-effect. The High Court reversed his decision and held that the offence had been proved. In *Getty* v. *Antrim County Council* [1950] N.I. 114 it was held that dismantling a tractor plough was damage; some of the parts had apparently been left at the scene and the machine could be re-assembled. Compensation was awarded on the basis of the cost of re-assembling the plough. Deflating a tyre therefore seems to fall within the definition of damage, even though the damage is ephemeral. A very minor action, e.g., turning a tap, flicking a switch or dropping a stone, can obviously lead to very serious damage in certain circumstances. Unscrewing the tyre-valve can likewise lead to some loss of time, delay and exertion of pumping, which appear to be matters falling within the principles of *King* v. *Lees*, *supra*. The defence of claim of right would not succeed in such a case, the occupier's rights to self-help being limited to removing the offending car, not making it temporarily immovable.

G. S. W.

Landlord and Tenant Notebook

BUSINESS TENANT AT WILL NOT PROTECTED

THE decision in *Wheeler* v. *Mercer* [1955] 3 W.L.R. 714 (C.A.) at the stage then reached occasioned two articles in this Notebook, one entitled " Tenant at Will " (99 SOL. J. 754) and the other " Protection of Business Tenant at Will " (*ante*, p. 66). The latter dealt with the actual decision of the Court of Appeal which, upholding the county court judge, concluded that the defendant tenant, who had remained in occupation after applying for a new lease under the Landlord and Tenant Act, 1927, s. 5, the proceedings having been adjourned so that the parties might negotiate, (i) had so remained as a tenant at will and not as a tenant at sufferance, and (ii) was, as tenant at will, entitled to the protection conferred by Pt. II of the Landlord and Tenant Act, 1954, which had come into force before negotiations produced agreement or disagreement. She was accordingly held lawfully to have refused to comply with a demand for possession which did not fulfil the requirements of a landlord's notice to terminate.

The Appellate Committee of the House of Lords has reversed this decision : *Wheeler* v. *Mercer* [1956] 3 W.L.R. 841 (H.L. (E.)) ; *ante*, p. 836, and, while the facts of the case were such that exactly similar events cannot occur again, much that was said was of general interest, both from the point of view of the interpretation of statutes in general and that of interpretation of Pt. II of the Landlord and Tenant Act, 1954, in particular. And there was much, as the second-mentioned Notebook pointed out in conclusion, to be said for the landlord.

Tenancy at sufferance

The plaintiff maintained his point that the defendant had, on 1st October, 1954 (the date when the Landlord and Tenant Act, 1954, came into force), been but a tenant at sufferance : one who, in Coke's words, " entreth by a lawfull lease, and holdeth over by wrong." Establishing this point would, of course, have saved further argument and consideration ; it could hardly have been contended that anyone in that position was entitled to security of tenure. The county court judge's judgment was that the defendant was what he called a " typical tenant at will, conforming to all the classical definitions of such a tenant " ; and, in the Lords, most of the Committee agreed with this conclusion, though Viscount Simonds was at pains to emphasise that there are varieties of tenancies at will. But it is of interest to note that the argument made some impression on Lord Morton who, while finding it unnecessary to form a concluded opinion on the point (agreeing, as he did, that a tenancy at will was not protected), considered that there was support for the view that the plaintiff had never consented to the defendant's occupation after 29th September, 1953 (when her contractual tenancy had expired, but negotiations were being conducted), his failure to take any proceedings being due to his knowledge that she would seek and obtain an interim order (Landlord and Tenant Act, 1927, s. 5 (13)) and his simply recognising the fact that " what cannot be cured must be endured."

Tenancy at will

Lord Morton's colleagues, however, were in no doubt ; but some dealt with the point more elaborately than others. Thus, Lord Cohen was content to base his view on the fact that the landlord's positive assent must be implied ; Viscount Simonds, when he came to the question whether Pt. II of the Act applied, manifested a willingness to sub-divide tenancies at will for the purpose in hand. Of this, more later.

Application of Part II

The main argument advanced on behalf of the tenant had the merit of simplicity : the tenant was a tenant at will ; a tenancy at will is a tenancy, which by s. 69 (1) means a tenancy created either immediately or derivatively, etc. ; *ergo*, it could not come to an end unless terminated in accordance with the provisions : s. 24 (1). This reasoning had been accepted as valid by both courts below ; but, before the Appellate Committee, other considerations prevailed. A " tenancy agreement," while it might cover a tenancy at will, might be apt language to use where the draftsman had in mind only a tenancy for a fixed term and a periodical tenancy. Looking at the statute as a whole, one found that s. 25, purporting to deal comprehensively with the way in which a landlord may terminate a tenancy, provided only for the cases of tenancies determinable by notice to quit given by the landlord and for " other " tenancies ; a tenancy at will was neither. The language of other sections invited the same conclusion ; and there was the provision in s. 29 (1) entitling a tenant to a new tenancy at such rent or on such other terms as thereinafter provided : there would be nothing to guide a court if the statute applied, say, to the case of an intending purchaser let into possession. But Viscount Simonds, on attention being directed to *Morgan* v. *William Harrison, Ltd.* [1907] 2 Ch. 137, conceded that a tenancy at will created by express agreement, not by implication of law, might possibly be protected.

Weekly tenancies

An argument advanced for the landlord which was based on the " exclusion " section produced (though it did not influence the opinions) some interesting observations : interesting, at all events, to anyone who has to do with weekly tenancies of shops, etc., which are not uncommonly met with

By s. 43 (3), Pt. II of the Act " shall not apply to a tenancy granted for a term certain not exceeding three months unless (*a*) the tenancy contains provision for renewing the term or extending it beyond three months from its beginning ; or (*b*) the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on by the tenant was in occupation, exceeds six months."

The landlord's contention was that it would be absurd to exclude a less than three months' tenancy and then extend protection to a tenancy at will which might be for a shorter period ; Parliament could not have intended the more impermanent tenancy to be within Pt. II of the Act.

Exclusion via such inclusion proved to be unnecessary. But, when mentioning the argument, Lord Cohen was content to refer to—without apparently adopting the whole of—the answer : that the exclusion only applies to tenancies " granted for a term certain " and a weekly tenancy was not a term certain *and* " all periodical tenancies were, therefore, within Pt. II of the Act " ; but Viscount Simonds referred to the case of a " weekly tenancy which had been extended from

week to week by a tenant holding over," and said that he was "not satisfied what the rights of such a tenant would be and did not think it desirable to discuss it."

One may recall that there was, for a period of some 5½ years towards the close of last century, authority to support the proposition that a weekly tenancy is a tenancy renewed by a fresh grant every week. *Sandford* v. *Clarke* (1888), 21 Q.B.D. 398, so decided; but in *Bowen* v. *Anderson* [1894] 1 Q.B. 164, Wills, J., who had delivered the judgment in the earlier case, pointed out that it was wrong. ("It is my own decision, and therefore I feel the more free to criticise it.") There had been a misapprehension because no one had referred to the authorities in point, and "I think we were mistaken in holding that a weekly tenancy comes to an end at the end of each week."

Bowen v. *Anderson* has more recently been accepted as good law in *Mellows* v. *Low* [1923] 1 K.B. 522, nor could one find support for the view that a weekly tenancy is one extended from week to week by the tenant holding over by turning to *Hammond* v. *Farrow* [1904] 2 K.B. 332, which decided that a weekly tenant was entitled to deduct rates from rent by virtue of the Poor Rate Assessment and Collection Act, 1869, he being the "occupier of a rateable hereditament let to him for a term not exceeding three months." By the express mention of "certain," and the provisions clearly designed to prevent frustration by successive grants, s. 43 (3) of the Landlord and Tenant Act, 1954, appears to allow of exclusion of only a particular type of tenancy, any periodical tenancy remaining protected.

R. B.

HERE AND THERE

THE LOVELY PRINCESS

DURING these last depressing weeks the legal quarter has been cheered by two royal occasions. After the triumphant reception of the Queen at Gray's Inn came Princess Margaret's call to the Bar and to the Bench at Lincoln's Inn. Those who were fortunate enough to be present came away absolutely enchanted. That night the great Hall was as full of diners as it could hold. When all were in their places the Treasurer, Judge Daynes, massive and fatherly, came to the middle of the daïs. Then, walking between Lord Simonds and Lord Morton, the Princess came in, her pink evening dress with fitted bodice and long full skirt making a splash of gay colour among all the black-robed figures around her. The Treasurer pronounced the formula of call to the Bar. Immediately the butler helped her to put on a silk gown. Then Lord Simonds presented her to the Treasurer as qualified to be a Bencher of the Society and she took her place at the Bench table between Judge Daynes and Field Marshal Lord Alexander. Everyone who was there was carried away by her extraordinary grace and liveliness and charm. One feels sure that if she did decide to practice at the Bar she would open a new and brilliant chapter in the professional life of women. If only it were possible, Princess Margaret's predecessors, royal members of Lincoln's Inn, would form an interesting dinner party, could they reassemble: Charles II and his brother James II, Prince Albert, the Prince's grandson George V, his Queen and his son, the late Duke of Kent. King Charles spontaneously inscribed his name in the admission book after a ceremonious but evidently highly agreeable dinner at which he and his suite were waited on by barristers and students. His brother, then Duke of York, who was in the party, followed his example. Prince Albert became a Bencher when he accompanied Queen Victoria to the State opening of the Inn's new Hall in 1845. George V served a year as Treasurer in 1904, when he was Prince of Wales, and was very punctilious that no custom should be omitted. There had been a tactful conspiracy to drop the practice whereby, when the wine needed to be replenished, the junior Bencher would call out, "Treasurer, ring the bell." "What for?" was the ritual rejoinder. "More wine," was the reply. The Prince insisted that the custom should be observed.

MIND YOUR TEETH

A CORRESPONDENT who read my recent note on the proposals of the Association of Municipal Corporations for legislation to ban "excessive, unreasonable or unnecessary noise," has kindly sent me a most interesting example of the way in which local authorities are already tackling the problem by the machinery of consents under the Town and Country Planning Acts. He enclosed a copy of a consent by the Mayor, Aldermen and Burgesses of a Home Counties borough to the conversion of certain premises into a dental surgery. The citizens of that borough must surely admire the paternal care with which "to secure proper amenity" they imposed a condition on the conversion—"that no noise or nuisance be caused to residents in the vicinity." Of course, one can see what the Town Hall had in mind. They could not have tolerated the installation of rows of dental chairs, like seats in a barber's shop, with the drills all buzzing simultaneously all day long, so that the neighbours might as well have been living next door to a factory in an area zoned for light industry. Again, it was essential to ensure that the dentistry was not so conducted as to draw from the patients howls of pain reminiscent of pig killing in the more primitive rural areas. The extractions must be painless or else the windows must be made properly soundproof. There must be no relapse into the methods of the old fairground dentists whose assistants would bang a drum to drown the cries of their victims. Bearing all these possibilities in mind one must congratulate the borough on its vigilance, caution and imaginative foresight.

RIGHT OF WAY

ONE is sorry to hear that Mr. Justice Oliver has been having trouble with the citizens of Manchester over a little matter of right of way. He was returning with Mr. Justice Donovan to his court after lunch and on a narrow bridge between the old and the new Town Hall buildings his procession met a stream of councillors leaving a meeting. A policeman shouted "silence," an usher cleared the way and a councillor made "a discourteous remark" (not recorded in the newspapers) of which Mr. Justice Oliver complained in a letter to the town clerk. One of the councillors afterwards said that he objected to being pushed on one side in a private passage-way for members of the council, but the Lord Mayor sent a letter of apology to the judge. Obviously the objecting councillor was unaware of that subtle point of precedence so tersely crystallised long ago by Mr. Baron Huddlestone at the Liverpool Assizes when he was senior judge and Mr. Justice Manisty was with him on his first circuit. When the Queen's health was proposed Manisty instinctively rose and Huddlestone tugged him down again, saying: "Sit down, Manisty, you damned fool. *We* are the Queen." So the councillor was only being required to stand aside for Her Majesty—by proxy. All the

same, every now and then these points of right of way do crop up. There was the famous conflict between Lord Chief Justice Denman and Dr. Whewell, the Master of Trinity College, where the judges lodge in Cambridge. The Chief Justice deemed himself entitled to enter by any gate he chose; the Master maintained that only one was by custom open to him and proceeded to lock the other. But Denman presented himself in full state and majesty before the locked gate and by sheer strength of personality enforced its opening. Lord Chief Justice Coleridge and Archbishop Benson once had a controversy as to which should take precedence of the other in arriving at the Assize Service at Oxford Cathedral. The Vice-Chancellor solved the problem by arranging for them to arrive separately. The Archbishop's sermon on that occasion was on "Humility."

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Commonwealth University Interchange

Sir,—I should like to refer to the editorial comment in your issue of 10th November, regarding the Commonwealth University Interchange Scheme, in which you deplore "the relatively insignificant place which the interchange of law teachers occupies in the scheme." You point out that, for the eight years during which the scheme has been in operation, only three out of the 120 grants in the junior category (postgraduate university research workers) and two out of the 210 grants in the senior category (university teachers on recognised study leave) have gone to teachers of law.

The Committee for Commonwealth University Interchange has been conscious for some time of the desirability of awarding more travel grants to university teachers of law. As one move in this direction, discussions have recently been going on with the Society of Public Teachers of Law with a view to offering some assistance in the way of travel grants for an interchange scheme which the Society hopes to arrange with the Association of Australian Law Schools.

There is, moreover, a third category of interchange visits which comes within the scope of the Committee for Commonwealth University Interchange. This provides for short visits by scholars of international repute, who are invited by other Commonwealth universities. Sixty such visits have been assisted by the Committee during the last eight years, and of this total no less than five have been distinguished teachers of law: Sir David Hughes Parry to the Canadian Universities, and Professor J. L. Montrose to the Australian Universities, whilst Professor J. C. de Wet, Professor of Law at the University of Stellenbosch, Professor K. Shatwell, Dean of the Faculty of Law at the University of Sydney, and Dr. C. A. Wright, Dean of the School of Law at the University of Toronto, have each visited a number of universities in this country.

In conclusion, I might also mention that a scheme parallel to the Commonwealth University Interchange Scheme exists to encourage shorter visits between members of university staffs in the United Kingdom and those in other European countries. This scheme is operated under the auspices of the Committee for Foreign University Interchange (the Chairman of which was until recently Sir David Hughes Parry). A proportionately large number of these interechange visits have been made by university teachers of law. I understand that, according to the figures compiled for a report which the Committee for Foreign University Interchange is now preparing, fourteen visits by teachers of law in other European universities have been paid to this country, and seventeen visits have been paid by university teachers of law in the United Kingdom to universities on the Continent, during the last eight years. Amongst the professors from United Kingdom universities most frequently invited by European universities under this scheme are Professor B. A. Wortley, of the University of Manchester, and Professor F. H. Lawson, of the University of Oxford.

CHARLES R. MORRIS,
Chairman, Committee for Commonwealth University Interchange.

Leeds.

BOOKS RECEIVED

Road Traffic Offences. Second Edition. By G. S. WILKINSON, Solicitor, Clerk to the Dudley Justices. pp. xxxix and (with Index) 276. 1956. London: The Solicitors' Law Stationery Society, Ltd. £1 15s. net.

Trial by Jury. The Hamlyn Lectures. Eighth Series. By The Hon. Sir PATRICK DEVLIN, One of Her Majesty's Judges in the High Court of Justice. pp. viii and 179. 1956. London: Stevens & Sons, Ltd. 15s. net.

Tristram and Coote's Probate Practice. First Supplement to Twentieth Edition. By H. A. DARLING, T. R. MOORE, LL.B., and W. J. PICKERING. pp. x and 51. 1956. London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

Green's Death Duties. Fifth (Cumulative) Supplement to Third Edition. By C. D. HARDING, LL.B. (Lond.), of the Estate Duty Office. pp. xiv and 102. 1956. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

Hill & Redman's Law of Landlord and Tenant. Supplement to Twelfth Edition. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law and Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law. pp. xii and 20. 1956. London: Butterworth & Co. (Publishers), Ltd. 6s. net.

The Lawyer's Companion and Diary, 1957. Editors: ERNEST L. BUCK and LESLIE C. E. TURNER. pp. 2159. 1956. London: Shaw & Sons, Ltd. and Stevens & Sons, Ltd. £1 7s. 6d. net.

International Commercial Arbitration. Rapporteur General: PIETER SANDERS. pp. 483. 1956. Paris: Dalloz et Sirey. 2,700 F.frcs.

"Current Law" Income Tax Acts Service. [CLITAS]. Release 36: 10th December, 1956. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son.

Mr. HAROLD DAVID PARTING BOTT has been appointed Registrar of the Aberystwyth and Machynlleth County Court and District Registrar in the District Registry of the High Court of Justice in Aberystwyth in succession to the late Mr. T. Eyton Morgan.

Mr. MALCOLM JOHN MORRIS has been appointed Recorder of the Borough of Margate.

Mr. T. OWEN JONES, assistant solicitor to Chester Corporation, has been appointed assistant solicitor to the National Coal Board at Manchester. He will take up that post early in the New Year.

Mr. D. L. OVERTON, assistant solicitor in the Town Clerk's department of Peterborough Corporation, has been appointed clerk to Leighton Buzzard Urban District Council.

REVIEWS

Road Traffic Offences. Second Edition. By G. S. WILKINSON, Solicitor, Clerk to the Dudley Justices. 1956. London: The Solicitors' Law Stationery Society, Ltd. £1 15s. net.

The author of this work is a justices' clerk and he is, therefore, accustomed to seeing three sides to every case—that of the prosecution, of the defence, and of the magistrates. The first edition of his work was entitled "Road Traffic Prosecutions," but in deference, as he says, to his critics, he has amended the title to show its concern with the defence as well as with the prosecution. It should prove of value, too, to the Bench, although it is to be hoped that they will not be plagued too often with the very many "reported decisions" of which the author assures us photostat copies may be obtained from The Law Society. If even the Divisional Court is sometimes impatient with cases appearing only in the All England Reports, the magistrates may feel even more dubious of the value of cases decided on their own set of facts and solely reported in the professional journals or in *The Times* newspaper. The position is of course that there is a dearth of case law on the Road Traffic Acts, and indeed where there has been any real alteration arising from case law the position has so often been remedied in due course by legislation. The new Road Traffic Act, 1956, shows this, e.g., in s. 29 (3) by simply repealing the power to order a limited disqualification, so overcoming the difficulty illustrated in *Petherick* v. *Buckland* [1955] 1 W.L.R. 48; and again in s. 43 (3), which reverses the decision in *Blenkin* v. *Bell* [1952] 2 Q.B. 620 and other cases dealing with the speed limit of empty goods vehicles.

The author's painstaking researches are nonetheless of value, and, if used judiciously, should be of great assistance, particularly to those who rarely undertake a motoring case. Mr. Wilkinson has ranged among Scottish and Irish decisions and has himself been guilty of what seems uncommonly Irish in saying (on p. 216) "Special reasons will arise now almost entirely in relation to charges of driving under the influence of drink and in most such cases they will be absent"! In his next edition he might well dispense altogether with the chapter on "Special Reasons."

The author has our sympathy—and admiration—in his task of incorporating into what may well have been on the stocks for some time the many important provisions of the new Road Traffic Act. This has necessitated much rewriting and interpolation—and a certain reluctance to shed cases and comment which became obsolete overnight. He appears, however, to have covered the new provisions very adequately and further promises a short supplement to his book when the Road Traffic Acts, 1930 to 1956, are consolidated. This is a most valuable work for practitioners, who at long last will have all the more important provisions and regulations in one conveniently sized book. The author is particularly to be congratulated on obtaining the B.M.A.'s consent to the inclusion as an Appendix of their constantly referred to "Intoxication Tests."

The Law on the Pollution of Waters. By A. S. WISDOM, L.A.M.T.P.I., Deputy Secretary and Solicitor, Thames Conservancy. 1956. London: Shaw & Sons, Ltd. £1 17s. 6d. net.

This book by the Deputy Secretary of the Thames Conservancy breaks new ground to some extent, in that it deals exclusively with water pollution law (including the pollution of the sea and of public water supplies), and not as a branch of the law of waters generally. It is up-to-date, including a short section on pollution by radio-active waste, but not dealing with the difficult problem of synthetic detergents, no doubt because they do not give rise to any specific legal problems.

Mr. Wisdom has throughout his narrative of 150 pages dealt thoroughly with both common law and statute, even where this has led to a little duplication. He has digested and cited a vast number of decided cases, and in consequence his text reads at times rather like a catalogue of the facts of reported decisions, but this should be an advantage to the practising solicitor who will be able to appreciate at a glance whether or not the actual report in a particular case is likely to assist him.

We have read the whole of Mr. Wisdom's text and have not been able to find him faulty in his statements of the law. However, the decision in the *Wenlock* case [1936] 3 All E.R. 599, noted on p. 51, could have been discussed also on p. 31, for the statement that a local authority may acquire a prescriptive right to pollute a natural stream with sewage was shown in the *Wenlock* case not to apply unless the right had been acquired prior to 1876.

The last 100 pages or so of the book are occupied with a print of material provisions of a number of statutes dealing with the subject matter of the book. We doubt the wisdom of including these sections in a handbook of this size; the statutes themselves will be available for most solicitors, and it is often dangerous to read parts of a statute without also consulting the definition and possibly other sections.

The book is well printed, adequately divided into sub-headings, and equipped with the usual indices.

Oke's Magisterial Formulist. Fourteenth Edition. Supplementary Volume No. 2 and Fourth (Cumulative) Noter-Up. By J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. 1956. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £1 15s. net, together. Complete work, £5 10s. net.

These two works contain precedents for use in cases under new legislation relating to food and drugs, road traffic, sexual offences and the Army and Royal Air Force. The noter-up is cumulative and will conveniently fit in the pocket at the end of the main work; the Supplementary Volume 2 is separately bound and appropriate reference is made to it throughout the noter-up. All the forms relating to the subjects mentioned above have been revised, where necessary, and the new works have been carefully edited. It will be essential for every magistrates' clerk and prosecuting solicitor to possess them. We have already noted in "Current Topics" (*ante*, p. 920) the change in the form of access provision in orders for the custody of children and we cite it again as an example of the painstaking care with which Mr. Wilson has done his task.

The Quantum of Damages. Volume 2: Fatal Injury Claims. By DAVID A. MCI. KEMP, B.A. (Cantab.), of the Inner Temple and the Wales and Chester Circuit, Barrister-at-Law, and MARGARET SYLVIA KEMP, M.A. (Cantab.), a Solicitor of the Supreme Court. 1956. London: Sweet & Maxwell, Ltd. £1 12s. 6d. net.

This is a companion volume, described as such by Birkett, L.J., in a laudatory foreword, to a book which we welcomed with some enthusiasm a couple of years ago and in which were set out, with copious classified examples, the principles on which damages are assessed in personal injury claims. This sequel is quite self-contained and states with care the basis on which damages are calculated in cases of fatal accident.

As in the former work, a feature is the verbatim citation of judgments, many not otherwise available in print, in which the assessment of damages awards are discussed. It is of the utmost value to those concerned with the practical aspects of the subject to have these judgments conveniently assembled according to the various types of case. A chapter which the profession will find very helpful, too, is that in which the prospect of interference with the amount of an award on appeal is discussed by reference not merely to the nebulous test "Is it hopelessly wrong?" but also to the practical history of the matter. The authors have come as near as is humanly possible to weighing up the imponderable.

Commonwealth and Empire Law Conference—London, 1955. 1956. London: The Solicitors' Law Stationery Society, Ltd. £1 15s. net.

Between the 20th and 27th July, 1955, there assembled in London the first of what must surely prove to be a long sequence of gatherings of lawyers from all over the Commonwealth. Inaugurated by the Lord Chancellor, the conference was attended by over 500 delegates accompanied here by nearly as many guests, and was addressed in plenary session and in committee by many distinguished speakers. Professional ethics and fusion took prominent places among the subjects of discussion, but many other topics of interest either professionally or as affecting legal development in a broader context were treated in informative papers contributed from many quarters. This record of the proceedings is much more than a souvenir of a unique occasion: it is a repository of a great deal of miscellaneous information about the state of the law in many places.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Court of Appeal

SALE OF GOODS: MOTOR CAR AND REGISTRATION BOOK HANDED OVER TO PROFESSED INTENDING BUYER: SUBSEQUENT FRAUDULENT SALE: WHETHER TRUE OWNER ESTOPPED FROM ASSERTING TITLE

Central Newbury Car Auctions, Ltd. *v.* Unity Finance, Ltd., and Another; Mercury Motors, third parties

Denning, Hodson and Morris, L.JJ. 15th November, 1956

Appeal from Newbury County Court.

The Sale of Goods Act, 1893, provides by s. 21 (1): "... where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell." On 4th November, 1955, the plaintiffs' motor sale-room was visited by a personable stranger giving the name of *C*, who expressed a wish to buy a second-hand Morris car. It was agreed that the plaintiffs should sell the car to a finance company who would let it on hire-purchase to *C*. *C* signed proposal forms for submission to the finance company and, contrary to the agreement between the plaintiffs and the finance company, was allowed to take away the car and its registration book, leaving behind in part exchange a Hillman car, which was later found to be on hire-purchase. The car, which the plaintiffs had purchased at an auction, was then registered in the name of one *A*, who had not signed the book. The book contained a warning that: "The person in whose name a vehicle is registered may or may not be the legal owner of the vehicle." On 7th November, a personable stranger, giving the name of *A*, took the car to the third parties' garage and offered it for sale, the purported signature of *A* being then in the book. The third parties bought the car and later sold it to the first defendants, a hire-purchase company, who let it to the second defendant. In an action for damages for conversion, the defendants pleaded that the plaintiffs were estopped from denying the authority of *C* to sell the car, as they had permitted him to take possession of the car and registration book without having made any or any sufficient inquiries. The county court judge dismissed the action. The plaintiffs appealed.

HODSON, L.J., said that there was no contractual relationship between *C* and the plaintiffs, who were the victims of larceny by a trick. A registration book was not a document of title; its primary purpose was to show who was the person liable to pay the annual licence tax. It was true that in the motor trade a wise buyer wanted the registration book, as it was some evidence of *bona fides*, and, in *Pearson* v. *Rose & Young, Ltd.* [1951] 1 K.B. 275, it was held that a sale without the book was not a dealing in the ordinary course of business under the Factors Act, 1889. For an estoppel to arise, the owner must invest the recipient of the chattel with the *indicia* of ownership. The doctrine originated in the *dictum* of Ashhurst, J., in *Lickbarrow* v. *Mason* (1787), 2 Term Rep. 63, that, "whenever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it." But later cases showed that the word "enable" was too wide if read literally. It was said that the negligence of the plaintiffs in parting with the book was a breach of a duty owed to buyers of cars in general. The plaintiffs accepted that they had facilitated *C's* fraud, but denied that they were in breach of duty to the public, any more than a man who left his house unlocked and enabled a thief to walk in and remove the contents. On the cases, estoppel would have arisen if the plaintiffs had armed the thief to go into the world as the absolute owner of the car. The handing over of the book had no such effect. The appeal should be allowed.

MORRIS, L.J., agreed.

DENNING, L.J., dissenting, said that the plaintiffs had intended to part with the property in the car, and that it was a case of fraudulent conversion. They should have foreseen the possibility that *C*, a complete stranger, might try to dispose of the car and book for his own benefit, and owed a duty to any person to whom *C* might try to dispose of them. Appeal allowed.

APPEARANCES: *J. T. Molony*, Q.C., and *E. Stockdale* (*Leader, Henderson & Leader*, for *Gardner, Leader & Co.*, Newbury); *G. Bean* and *H. Trenchard* (*Hamlins, Grammer & Hamlin*, for *F. S. Moore & Price*, Birkenhead).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 1068**

Chancery Division

INCOME TAX: FLATS FORMING PART OF SINGLE BUILDING: WHETHER ASSESSMENT ON TENANT OR LANDLORD

Gatehouse *v.* Vise (Inspector of Taxes)

Danckwerts, J. 8th November, 1956

Appeal from the Commissioners for the General Purposes of Income Tax.

The taxpayer, who was the tenant of a flat in Knightsbridge, appealed against an assessment on him as occupier for the year 1951–52 under Sched. A to the Income Tax Act, 1918, in the sum of £201. The ground floor of the property in question comprised four garages. On the first floor there were five flats, of which the taxpayer occupied flat No. 3. There was no means of communication through the garages to the first floor. The only means by which access could be obtained to the flats was by one of two common staircases and along a balcony, on which the front door of each flat opened. The landlords were responsible for the repair of the balcony and staircases. Under the terms of the lease relating to the flat in question the lessee had paid the sum of £2,750, and agreed to pay the annual sum of £1 for a term of twenty-two years from 25th December, 1950 (less the last three days). The taxpayer claimed that under the rules relating to Sched. A the assessment should have been made not on him but on the landlords. The General Commissioners found that the flat was part of a single house or building but accepted the contention of the inspector of taxes that r. 12 of case VII of Sched. A applied, and accordingly they confirmed the assessment. The taxpayer appealed.

Rule 8 of case VII of Sched. A to the Income Tax Act, 1918, provides: "The assessment and charge shall be made upon the landlord in respect of ... (*c*) any house or building let in different apartments or tenements and occupied by two or more persons severally. Any such house or building shall be assessed and charged as one entire house or tenement." Rule 12 provides: "Where a house is divided into distinct properties, and occupied by distinct owners or their respective tenants, such properties shall be separately assessed and charged on the respective occupiers thereof."

DANCKWERTS, J., said that in essence the case depended on which of the two rules, rr. 8 and 12, applied. For the purposes of the argument before him both sides had accepted that the block of flats constituted a "house." In *A.-G.* v. *Mutual Tontine Westminster Chambers Association, Ltd.* (1875), L.R. 10 Ex. 305, Westminster Chambers consisted of several blocks, and each block was divided into different tenements or suites of rooms which were quite distinct, and had an open door leading on to the common staircase. The association had power by statute to demise or sell any suite separately, and the suites were let as chambers, offices or residences. The majority of the Court of Exchequer thought that for the purposes of inhabited house duty the association must be assessed as occupiers of each block treated as one dwelling-house, under a rule equivalent to r. 8 (*c*), and that the respective tenants of the different suites should not be assessed under another rule which was the equivalent of r. 12. It seemed to him that the present case was really governed by that case and other decisions to which he had been referred. The assessment should have been made on the landlords under r. 8 (*c*), the words of which fitted the case. It had been made under the wrong rule and ought to be discharged, and the appeal should be allowed. Appeal allowed.

APPEARANCES: *F. N. Bucher*, Q.C., and *H. H. Monroe* (*Alexander Rubens & Co.*); *Cyril King*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 1509**

DOMICILE: CHANGE: HUSBAND AND WIFE LIVING APART: PREDECEASE OF HUSBAND

***In re* Scullard, deceased; Smith *v.* Brock and Others**

Danckwerts, J. 20th November, 1956

Adjourned summons.

The testatrix left her husband in 1908 and never lived with him again. He had an English domicile, which he retained until his death on 4th February, 1955. In 1946 or 1947 the testatrix, having lived in various places, went to live in Guernsey, with the object of being near her daughter. At that time she expressed an intention of residing in Guernsey until her death. Her personal property was removed to Guernsey, and her realisable securities were sold and reinvested in bearer bonds or war stock, and taken to Guernsey. In 1949 a cottage was purchased for her occupation with certain trust funds. She died on 19th March, 1955, surviving her husband by some six weeks, but never having learnt of his death. She expressed no further intention after his death of continuing to live permanently in Guernsey, and the medical evidence was that during the last two weeks of her life she was incapable of expressing any intention. A summons was taken out to have determined the question whether, at the date of her death, she was domiciled in Guernsey.

DANCKWERTS, J., said that there was no evidence of any expression of intention after the death of her husband on 4th February, 1955, and before her own death six weeks later. On the evidence as a whole, he thought it right to say that there was sufficient to enable him to come to the conclusion that, at any rate after about 1946 or 1947, the testatrix had formed a definite intention to make Guernsey her permanent home. The difficulty arose in this way. As long as she was married to her husband, even though she was separated from him as completely as possible short of judicial separation, she could not form an effective intention to change her domicile from that of her husband; (see Halsbury's Laws of England, 3rd ed., vol. 7, at p. 24, the paragraph headed "Married Women)." He had been referred to two cases: *In re Cooke's Trusts* (1887), 56 L.T. 737, and *In re Wallach* (1950), 66 T.L.R. (Pt. I) 132; it seemed to him that those cases reached different conclusions, but he (his lordship) reconciled them on their facts. In the circumstances he could not see why an intention which, as he found on the evidence, the wife was plainly shown to have in her mind during her lifetime—namely, to make her permanent home in Guernsey—but which could not be effective in law until her husband was dead, should not be effective in law in accordance with her intention when she survived him. He did not see why it should not be assumed that her intention continued after the death of her husband, and why some new overt act was required when all previous evidence was consistent with there having been no different intention during her life. Accordingly, he came to the conclusion that the testatrix had an intention to acquire a domicile of choice in Guernsey and that that intention was effective in law. Declaration accordingly.

APPEARANCES: *Peter Oliver; J. L. Arnold; G. B. H. Dillon* (*Moon, Gilks & Moon*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 1060**

ESTATE DUTY: DISCLAIMER OF SPECIFIC LEGACIES WITHIN FIVE YEARS OF DEATH OF DISCLAIMANT: LIABILITY

***In re* Stratton's Disclaimer; Stratton and Others *v.* Inland Revenue Commissioners**

Danckwerts, J. 21st November, 1956

Adjourned summons.

The widow of a testator disclaimed all interest in specific legacies and a devise to which she was entitled under the will of her husband, and that property, in consequence, went to her three sons, the residuary legatees. She died within five years of making the disclaimer. The Crown claimed that estate duty was payable on her death by virtue of s. 45 (2) of the Finance Act, 1940, in that the disclaimer was "the extinguishment at the expense of the deceased of a debt or other right . . . in favour of the person for whose benefit the debt or right was extinguished . . ." within the meaning of those words in the subsection.

DANCKWERTS, J., said that it seemed to him that there were four things which had to be established in order that duty should be payable under that subsection. First of all, there had to be possessed or owned by the deceased in some way "a debt or other right." Secondly, there had to be an extinguishment of that debt or other right. Thirdly, the extinguishment must be at the expense of the deceased; and lastly, it must have been extinguished for the benefit of some person. An argument was put up to show that the effect of a disclaimer was to destroy the right to a legacy as if it had never existed. He had been referred to Shepherd's Touchstone (7th ed. (Preston), vol. 2, pp. 285 and 452), and other elderly authorities, and there was no doubt it was perfectly correct for many purposes that the effect of a disclaimer was to extinguish a legacy as though it had never been in existence at all, because for such purposes it related back to the date of the testator's death. Lord Green said in *In re Parsons* [1943] Ch. 12: "the fact that for some purposes a disclaimer makes the gift void *ab initio* does not mean that during the period [pending disclaimer] . . . the competence must be treated in law as not having existed." In Williams on Executors (13th ed., at p. 768), it was said that "until assent or conveyance, a beneficiary has an inchoate right transmissible to his personal representatives." It seemed to him, therefore, that he had to treat the widow as having had at least an inchoate right to the legacies in question pending the execution of a disclaimer. That inchoate right was a right within the meaning of the word "right" in its ordinary sense, and within the meaning of s. 45 (2) of the Act. If he reached that conclusion, it seemed quite impossible to contend that the effect of the disclaimer was not to extinguish that right. Plainly, it did extinguish it. In regard to the third requirement, the words "at the expense of the deceased," it was contended on behalf of the plaintiffs that those words inferred that there must be something like the person who extinguished the debt putting his hand into his pocket. He could not see why there should be any such limitation. The words were not used in any technical manner and were covered by the definitions in the Oxford Dictionary of "expense," in which the words cost or sacrifice were used. Consequently, that requirement was satisfied. As to the fourth requirement, the widow must, in the absence of evidence to the contrary, be presumed to have intended the result of the disclaimer, namely, to benefit her sons, in whose favour the right was extinguished; and accordingly the Crown's claim that estate duty was payable on her death was correct.

Declaration accordingly.

APPEARANCES: *H. E. Salt*, Q.C., and *A. J. Belsham* (*Mackrell, Maton & Co.*); *John Pennycuick*, Q.C., and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 1054**

Probate, Divorce and Admiralty Division

SHIPPING: COURT OF FORMAL INVESTIGATION: REPORT SUBSEQUENTLY AMENDED AFTER READING IN OPEN COURT

The *Corchester*

Lord Merriman, P., and Willmer, J. 16th November, 1956

Appeal from the decision of a court of formal investigation under the Merchant Shipping Act, 1894.

The appellant was the master of the *Corchester*, which sank as a result of a collision with another vessel. A court of formal investigation was constituted under s. 466 of the Merchant Shipping Act, 1894, to inquire into the circumstances of the collision. The decision of the court, which was contained in the report, the questions and answers, and the annex to the report, was read in open court as required by s. 470 (2) of the Merchant Shipping Act, 1894. In the decision as read, the commissioner recommended in the report that the master's certificate of the appellant be suspended, but in the annex thereto suspended the appellant's certificate. The report did not contain a finding that the collision was caused by the wrongful act or default of those navigating either vessel. The full report was forwarded to the Minister of Transport and Civil Aviation.

Subsequently the Treasury Solicitor's representative pointed out to the commissioner the discrepancy between the report and the annex, and the latter altered the report to suspend the appellant's certificate instead of recommending a suspension, and inserted in the report a finding that the collision was caused by the fault or default of those in charge of both vessels. The alterations were made without notice to the appellant or his legal advisers and the amended report was forwarded to the Minister without being read as amended in open court. The divisional court found, on the advice of their assessors, that the criticisms of the appellant contained in the annex were not such as to warrant a finding of a wrongful act or default on the part of the appellant.

WILLMER, J., reading the judgment of the court, said that they were satisfied that the action of the commissioner in altering the wording of the report, after the decision had been stated in open court, was improper and without jurisdiction. They thought that the true inference was that the commissioner made a mistake of law, in that when preparing the original report he had not in mind what were the exact duties and powers of the court, as defined by s. 470 (1) (*a*) of the Act, in relation to suspension of a certificate. In this case they were dealing with the decision of a tribunal whose jurisdiction was wholly statutory, and unless what the commissioner did could be shown to be within the four walls of the statute he could have no jurisdiction. It was true that a court holding a formal investigation under the Merchant Shipping Act, 1894, was given, by s. 466 (10), all the powers of a court of summary jurisdiction which had the power to correct an accidental slip or omission in any order made by it: see *Cooper* v. *Cooper* [1940] P. 204. But it had not been, and could not be, suggested that its powers extended beyond that. What it was vital to observe was that, in the case of a court holding a formal investigation, the procedure for announcing the decision and submitting the report was expressly laid down by the provisions of the enabling statute. No provision was made for submitting an amended or corrected report to the Ministry; and no decision to suspend or cancel a certificate was valid unless stated in open court. The report, in its present amended form, had never been read in open court as required by s. 470 (2), but only the decision in the report in its original form. That alone was sufficient to justify the conclusion that the report in its present amended form must be totally disregarded. It was also to be remembered that the alterations to the original report were made behind the back of, and without notice to, the appellant or his advisers (*Inland Revenue Commissioners* v. *Hunter*, [1914] 3 K.B. 423 *per* Scrutton, J.). For those reasons they were satisfied that the report in its present amended form must be totally disregarded, and this appeal must be treated as an appeal from the decision contained in the original report, as read in open court, and as originally submitted to the Ministry. The question then arose whether there ever had been any valid suspension of the appellant's certificate. Section 470 (1) (*a*) of the Act of 1894 required that, to found jurisdiction to cancel or suspend the certificate of an officer, there must be a finding that the casualty was caused by the wrongful act or default of the holder of the certificate. While it was desirable that such finding should be expressly contained in the report, the fact that it was only contained in the annex did not vitiate the decision, provided the decision to suspend was stated in the report. But the commissioner had no jurisdiction to suspend the appellant's certificate since, assuming that the report contained a clear decision suspending the certificate, the report and annex contained no specific finding of wrongful act or default on the part of the appellant. Further, where an officer's certificate was ordered to be suspended there should be express findings (*a*) that he was guilty of a specific wrongful act or default, and (*b*) that the casualty was caused or contributed to thereby. Appeal allowed.

APPEARANCES: *H. V. Brandon* (*Ingledew, Brown, Bennison & Garrett*); *J. V. Naisby*, Q.C., and *G. N. W. Boyes* (*Treasury Solicitor*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 1090**

PROBATE: PRACTICE: ADMINISTRATION: FORMER ADMINISTRATOR LIABLE TO RENDER INVENTORY AND ACCOUNT

In the Estate of Thomas, deceased

Karminski, J. 21st November, 1956

Motion to commit.

In August, 1951, the defendant, James Mark Thomas, obtained a grant of letters of administration of the estate of his brother, Percy James Thomas, deceased. He paid some legacies under a will of the deceased dated 26th December, 1950, and the funeral expenses. On 18th May, 1956, at the conclusion of a probate action, Davies, J., pronounced in favour of the will, revoked the grant, and granted letters of administration with the will annexed to the plaintiff, a sister of the deceased. The defendant failed to make an inventory of the estate and render accounts of his administration, and a summons was taken out under s. 25 of the Administration of Estates Act, 1925, requiring him to do so. An order to that effect was made by Mr. Registrar Wilkinson on 8th October, 1956. The defendant failed to comply with the order and the plaintiff applied to have him committed for contempt of court.

KARMINSKI, J., said that he had looked at Mortimer on Probate, 2nd ed., p. 501; Tristram & Coote, Probate Practice, 20th ed., p. 446; and *Taylor* v. *Newton* (1752), 1 Lee 15, and had come to the conclusion that the court had power to make orders such as that of 8th October, 1956, in cases of this kind. There was no distinction for this purpose between a grant which had been terminated by a cessate grant and a grant of this kind which had been terminated by the court in a probate action.

[His lordship then adjourned the matter for a fortnight for the defendant to exhibit an inventory and account of the estate.]

APPEARANCES: *Conolly Gage* (*Piesse & Sons*); the defendant in person.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 1516**

INQUIRY INTO THE LAW DEALING WITH TRADE EFFLUENTS

COMMITTEE INVITES EVIDENCE

Sir Frederick Armer, K.B.E., C.B., M.C., chairman of the Board of Control and formerly deputy secretary, Ministry of Health, has been appointed chairman of the sub-committee set up by the Central Advisory Water Committee to inquire into the law dealing with trade effluents. Any person or body wishing to give evidence to the sub-committee should send a memorandum to Mr. H. R. Pollitzer, secretary, Trade Effluent Sub-Committee, at the Ministry of Housing and Local Government, Whitehall, S.W.1. The Committee's terms of reference were given at p. 810, *ante*.

On the occasion of the third of the series of four lectures by the Hon. Sir Patrick Devlin on Trial by Jury at London University on 28th November, the Hamlyn Trust arranged a dinner at the Kingsley Hotel, attended by Dr. John Murray (chairman), Professor G. W. Keeton (vice-chairman), Sir Edmund L. Ball, Professor D. J. Ll. Davies, Professor Philip S. James, Professor J. L. Montrose and Mr. J. R. Warburton (trustees), The Rt. Hon. Sir Alfred Denning, The Hon. Sir Patrick A. Devlin, Professor A. L. Goodhart, Professor C. J. Hamson, Professor F. L. Lawson, Mr. Richard O'Sullivan, Q.C., and Mr. Glanville Williams (present and past lecturers) and Professor Richard C. Fitzgerald, Mr. Geoffrey Marshall and Mr. Hilary Stevens, with Mr. J. J. Malim (clerk to the trustees).

The 1957 Hamlyn Lectures are to be delivered by The Rt. Hon. Lord MacDermott on Protection from Power under English Law, at the Queen's University of Belfast, during the autumn of next year.

GRAY'S INN

The following have been elected Masters of the Bench of Gray's Inn: Professor Claude Humphrey Meredith Waldock, C.M.G., O.B.E., Q.C., Mr. Roy Ernest Borneman, Q.C., Mr. Roy Mickel Wilson, Q.C., Mr. Hugh Elvet Francis and Professor Charles John Hamson, M.A., LL.M.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Cinematograph Films Bill [H.C.] [5th December.

To provide for the imposition of a levy on exhibitors of cinematograph films and for the making from the proceeds thereof of payments to, or for the benefit of, makers of British cinematograph films and to the Children's Film Foundation Limited ; to amend the law relating to the functions and finances of the National Film Finance Corporation ; to extend the period during which, under section one of the Cinematograph Films Act, 1948, the inclusion of British cinematograph films amongst registered films exhibited to the public in theatres in Great Britain is obligatory and increase the maximum amount of certain fees payable under the Cinematograph Films Act, 1938 ; and for purposes connected with the matters aforesaid.

Press Authority Bill [H.L.] [6th December.

To establish a Press Authority and to confer powers upon it.

Read Third Time :—

Agriculture (Silo Subsidies) Bill [H.C.] [6th December.
Expiring Laws Continuance Bill [H.C.] [6th December.
Patents Bill [H.L.] [6th December.

In Committee :—

Air Corporations Bill [H.C.] [6th December.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Hydrocarbon Oil Duties (Temporary Increase) Bill [H.C.] [6th December.

To increase the duties of customs and excise chargeable on hydro-carbon oils, petrol substitutes, and spirits used for making power methylated spirits and, in connection therewith, to enable certain fares to be increased.

Read Second Time :—

New Streets Act, 1951 (Amendment) Bill [H.C.] [7th December.
Northern Ireland (Compensation for Compulsory Purchase) Bill [H.C.] [7th December.
Public Health Officers (Deputies) Bill [H.C.] [7th December.
Transport (Railway Finances) Bill [H.C.] [3rd December.

In Committee :—

Homicide Bill [H.C.] [4th December.

B. Questions

Legal Aid Scheme

The Solicitor-General said that after an assisted person's certificate was discharged, he was still liable up to the maximum amount of his contribution for the costs already incurred on his behalf, and to end his liability on discharge of the certificate would only transfer that obligation to the taxpayer. [3rd December.

Hire-Purchase Deposits

Mr. Errol said that there was no evidence of moneylending as a means to facilitate the payment of hire-purchase deposits taking place on any significant scale. There was no objection to a free loan from a moneylender, but investigations would be made into such a loan if it were tied to a hire-purchase transaction. [4th December.

STATUTORY INSTRUMENTS

Association of County Councils (Contributions) (Scotland) Order, 1956. (S.I. 1956 No. 1855 (S. 85).) 5d.

Census of Distribution (1958) (Restriction on Disclosure) Order, 1956. (S.I. 1956 No. 1860.) 5d.

County Court (Amendment No. 3) Rules, 1956. (S.I. 1956 No. 1851 (L. 20).) 9d.

The purpose of these rules is to adapt the County Court Rules in anticipation of the coming into operation of further provisions of the Administration of Justice Act, 1956, and accordingly their date of operation is to be 1st January next or such later day as the Lord Chancellor may appoint for the commencement of specified sections of the 1956 Act. A large number of miscellaneous amendments are made, affecting Ords. 2, 8, 20, 24, 25, 34, 35, 37, 39, and many of the county court forms.

County Court Fees (Amendment No. 2) Order, 1956. (S.I. 1956 No. 1907 (L. 21).) 5d.

This order comes into force on 1st January, 1957, except so far as it is consequential on certain sections of the Administration of Justice Act, 1956, which are not yet operative. *Inter alia*, the fees for the registration of judgments are increased.

Crown Estate (Appointed Day) Order, 1956. (S.I. 1956 No. 1890 (C. 15).)

Defence Regulations (No. 4) Order, 1956. (S.I. 1956 No. 1884.) 5d.

This order revokes, from 1st January, 1957, regs. 51A (7), (9) (*b*), and in part (11) and (12), 59 (2) and part of 59 (3), and amends reg. 85 (1) (*c*) of the Defence (General) Regulations.

Defence Regulations (No. 5) Order, 1956. (S.I. 1956 No. 1885.) 5d.

This order, as from 6th December, extended control under regs. 55, 55AA and 55AB of the Defence (General) Regulations to a number of coal and oil products.

Defence Regulations (No. 6) Order, 1956. (S.I. 1956 No. 1886.) 5d.

This order amends reg. 55 (1) of the Defence (General) Regulations in its application to paper, tin plate, etc., as from 1st January next.

East Africa (High Commission) (Amendment) Order in Council, 1956. (S.I. 1956 No. 1891.) 6d.

Emergency Laws (Continuance) Order, 1956. (S.I. 1956 No. 1883.) 5d.

This order extends for one year from 10th December certain emergency enactments and the following Defence (General) Regulations : regs. 52, 83, 85, 92, 93, 98, 99B, 100–102 and 105. Certain provisions of the Defence (Agriculture and Fisheries) Regulations, the Defence (Armed Forces) Regulations, and the Defence (Patents, Trade Marks, etc.) Regulations are similarly extended.

Emergency Laws (Miscellaneous Provisions) (Colonies, etc.) Order in Council, 1956. (S.I. 1956 No. 1887.) 5d.

Greenwich Hospital School (Regulations) (Amendment) Order, 1956. (S.I. 1956 No. 1894.)

Import Duties (Exemptions) (No. 15) Order, 1956. (S.I. 1956 No. 1863.) 5d.

Lace Industry (Scientific Research Levy) (Amendment) Order, 1956. (S.I. 1956 No. 1873.) 5d.

Merchant Shipping (Certificates of Competency as A.B.) (New Zealand) Order, 1956. (S.I. 1956 No. 1895.) 5d.

Metropolitan Police Staffs (Increase of Superannuation Allowances) Order, 1956. (S.I. 1956 No. 1901.) 5d.

Mid-Wessex Water Order, 1956. (S.I. 1956 No. 1875.) 11d.

Morocco (Former Spanish Zone) Order, 1956. (S.I. 1956 No. 1896.) 5d.

National Insurance and Industrial Injuries (Malta) Order, 1956. (S.I. 1956 No. 1897.) 8d.

Northern Rhodesia (Native Reserves) (Amendment) Order in Council, 1956. (S.I. 1956 No. 1892.) 5d.

Nottingham-Derby-Stoke-on-Trent Trunk Road (Sandiacre and Stapleford By-pass) Order, 1956. (S.I. 1956 No. 1854.) 7d.

Paper (Miscellaneous Controls) (Revocation) Order, 1956. (S.I. 1956 No. 1915.) 5d.

Patents (Extension of Period of Emergency) Order, 1956. (S.I. 1956 No. 1889.)

This order extends, for one year from 10th December, art. 1 of the Patents (Extension of Period of Emergency) Order, 1950.

Draft **Police Pensions** (No. 3) Regulations, 1956. 8d.

Draft Police Pensions (Scotland) (No. 3) Regulations, 1956. 8d.

Registered Designs (Extension of Period of Emergency) Order, 1956. (S.I. 1956 No. 1888.)

This order extends, for one year from 10th December, art. 1 of the Registered Designs (Extension of Period of Emergency) Order, 1950.

Registration of Restrictive Trading Agreements Order, 1956. (S.I. 1956 No. 1869.) 5d.

Retention of Cables, Mains and Pipe under Highway (Gloucestershire) (No. 3) Order, 1956. (S.I. 1956 No. 1903.) 5d.

Sierra Leone (House of Representatives) Order in Council, 1956. (S.I. 1956 No. 1893.) 10d.

Solicitors' Remuneration (Disallowance) Order, 1956. (S.I. 1956 No. 1898.)

Stopping up of Highways (Essex) (No. 7) Order, 1956. (S.I. 1956 No. 1865.) 5d.

Stopping up of Highways (Essex) (No. 21) Order, 1956. (S.I. 1956 No. 1878.) 5d.

Stopping up of Highways (Gloucestershire) (No. 19) Order, 1956. (S.I. 1956 No. 1879.) 5d.

Stopping up of Highways (Leicestershire) (No. 23) Order, 1956. (S.I. 1956 No. 1870.) 5d.

Stopping up of Highways (Lincoln) (No. 1) Order, 1956. (S.I. 1956 No. 1871.) 5d.

Stopping up of Highways (London) (No. 48) Order, 1956. (S.I. 1956 No. 1880.) 5d.

Stopping up of Highways (Nottinghamshire) (No. 11) Order, 1956. (S.I. 1956 No. 1866.) 5d.

Stopping up of Highways (Warwickshire) (No. 4) Order, 1956. (S.I. 1956 No. 1872.) 5d.

Sunday Baking and Sausage Making (Christmas and New Year) Order, 1956. (S.I. 1956 No. 1906.)

Supplies and Services (Continuance) Order, 1956. (S.I. 1956 No. 1882.)

This order continues in force for a further year from 10th December the Supplies and Services (Transitional Powers) Act, 1945.

Wages Regulation (Corset) (Amendment) Order, 1956. (S.I. 1956 No. 1874.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Company Law—Infant as Member or Director of Private Limited Company

Q. We have been asked to advise on the position of an infant (girl, aged 18) first as a member of a private limited company, and secondly, as a director of the same company. The shares of the company were acquired by the infant by means of a transfer from her father, and we have observed statements in some of the books on company law that such a transfer to an infant is ineffectual, and this is so even if the transfer has been registered, as in this present case. It would seem to arise from that that the shares have not been vested in the infant and therefore she is not a member of the company and is not entitled to vote at any meetings of the company. A situation has arisen regarding the control of the company which makes the question of the infant being entitled to vote in respect of these shares of the utmost importance. The same infant has recently been appointed a director of the company, and we have been asked to advise on the validity of that appointment. There seems no doubt at all that so far as the general law is concerned, an infant can be a director, however undesirable that may be, and the only matter which would make the appointment invalid would be a provision in the articles preventing infants from acting, a copy of which we have not yet seen.

A. Admittedly there will be found in textbooks statements to the effect that a transfer to an infant is ineffectual, but this is not really correct. A transfer to an infant is not void but merely voidable ; in the same way the infant's agreement to become a member of the company (cf. Companies Act, 1948, s. 73) is merely voidable rather than non-existent. In our view the infant, unless there be some relevant provision in the memorandum or articles of association of the company, must in all respects be treated as a member of the company and entitled to attend and vote at meetings of the company ; this position would, of course, change if the infant repudiated the transfer or (apparently) if liquidation supervenes (cf. *Symon's Case* (1870), L.R. 5 Ch. 298). In confirmation of this view it is interesting to note that as regards fully paid shares it is possible that a company can be compelled to register a transfer to an infant (*R.* v. *Midland Counties and Shannon Junction Railway Co.* (1862), 15 Ir. C.L.R. 514), although the point is not clearly decided. It is furthermore clear that a transfer by an infant of shares registered in his name is an effectual transfer and this would not be the case if the transfer to the infant had been ineffectual. We can see no ground for arguing the validity of the infant's appointment as a director, unless, as you say, there is some relevant provision in the articles of association.

Power of Attorney—Not Enrolled—Conveyance of Several Properties—Separate Dealing by Purchaser with Part of Property—Whether Acknowledgment for Production Sufficient

Q. A point has arisen under s. 125 of the Law of Property Act, 1925, which provides that where a power of attorney authorises the attorney to convey more than one separate property, the power should be enrolled at the Central Office unless handed over to the purchaser. In the case which has arisen *A* sold to *B* several properties under the power of attorney and the power of attorney was duly handed to *B* ; now *B* is selling one property to *C* and is giving an acknowledgment for production of the power of attorney. Is this acknowledgment for production sufficient, having regard to the fact that the power of attorney was not enrolled ?

A. We think it could be argued that s. 125 (1) contemplates as coming within the exception to the compulsory filing rule a document which, conferring a power to convey several properties in one transaction, is handed over on completion of that one transaction. Once the transaction is complete, a separate dealing by the purchaser with only part of the property ought not to be regarded as reviving any necessity of filing. As with any other document common to a title which is being retained by the vendor and to the title being conveyed, an acknowledgment for production should be sufficient. To take an extreme case, it may not be possible thirty years after the execution of the power to obtain satisfactory evidence to verify the execution, so as to make it possible to file the power. On the other hand, s. 125 (2) speaks of the purchaser being entitled to have the power or an *office* copy thereof delivered to him. An office copy can only be obtained if the power is filed, and as there is no time limit on filing, and there is power for the Chief Master of the Supreme Court to accept evidence other than an affidavit of due execution, we think it safer to try to file the power if possible.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES AND NEWS

Personal Notes

Mr. C. J. P. C. Jowett, Assistant Coroner for South East Somerset, retired from that post on 30th November.

Mr. Thomas Oldroyd, town clerk of Nuneaton, will be retiring from that post on 31st March, 1957, having completed twenty-five years' service with the corporation.

Mr. E. Laurence Thackray, solicitor, of Huddersfield, has been elected president of the Huddersfield Authors' Circle.

Mr. Ralph Kenneth Thompson, solicitor, of Clarges Street, London, W.1, was married recently at Ripon to Miss Dilys Grace Hughes, of Ripon.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On 23rd November, 1956, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that JOSIAH REES TUDOR GRIFFITHS, of Nos. 3 & 4 Grosvenor Place, Weymouth, be suspended from practice as a solicitor for a period of six months from 1st January, 1957, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 23rd November, 1956, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon ALBERT ABOUDI, of Atlantic Chambers, No. 7 Brazennose Street, Manchester, and No. 54 Bryanston Street, London, W.1, a penalty of £250 to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

JOHN HENRY ADENEY LANG, of Stumblewood, Tower Hill, Dorking, Surrey, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an Order was, on 22nd November, 1956, made by the committee that the application of the said John Henry Adeney Lang be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

Wills and Bequests

Mr. Frank Stuart Boxall, retired solicitor, of Yeovil, Somerset, left £20,363 (£18,355 net).

Mr. Francis Charles Greaney, solicitor, of Streatham Common South and of Bedford Row, London, W.C.1, left £21,752 net.

Mr. Richard Frederick Jones, solicitor, and clerk to the Aethwy Rural Council, left £5,081 net.

OBITUARY

MR. H. E. HURD

Mr. Herbert Edward Hurd, retired solicitor, late of King Street, London, E.C.2, and of Brasted Chart, Kent, died on 29th November, aged 94. He was admitted in 1889.

SOCIETIES

THE NORTH STAFFORDSHIRE AND DISTRICT LAW SOCIETY held its annual dinner at the North Stafford Hotel, Stoke, on 27th November, where Sir Donald L. Finnemore, the High Court Judge, responded on behalf of the Bench to the toast the "Bench and Bar," which was proposed by Mr. F. A. Barnes, vice-president of the North Staffordshire Society. Mr. E. Ryder Richardson responded on behalf of the Bar. Mr. I. D. Yeaman, vice-president of The Law Society, proposed a toast to the "North Staffordshire and District Law Society," to which Mr. E. Corbishley, president, responded. A toast to the "Visitors" was proposed by Mr. John F. Moxon, a past-president of the society, and Mr. T. G. Lund, secretary of The Law Society, responded.

CASES REPORTED IN VOL. 100

13th October to 15th December, 1956

Lists covering all cases reported earlier this year appear in the Interim Index (to 30th June) and at p. 686, *ante* (7th July to 1st September)

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 21 Red Lion Street, London, W.C.1. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).